PART 927—WINTER PEARS GROWN IN OREGON, WASHINGTON, AND CALIFORNIA

1. The authority citation for 7 CFR Part 927 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 927.8 is revised to read as follows:

§ 927.8 Ship or handle.

Ship or *handle* means to sell, deliver, consign or transport pears, within the production area or between the production area and any point outside thereof: Provided, That the term ''handle'' shall not include the transportation of winter pear shipments within the production area from the orchard where grown to a packing facility located within the production area for preparation for market.

3. Section 927.10 is revised to read as follows:

§ 927.10 Production area.

Production area means and includes the States of Oregon, Washington, and California.

4. Section 927.12 is revised to read as follows:

§ 927.12 Export market.

Export market means any destination which is not within the 50 states, or the District of Columbia, of the United States.

5. In § 927.41, paragraph (a) is revised to read as follows:

§ 927.41 Assessments.

(a) Assessments will be levied only upon handlers who first handle pears. Each handler shall pay assessments on all pears handled by such handler as the pro rata share of the expenses which the Secretary finds are reasonable and likely to be incurred by the Control Committee during a fiscal period. The payment of assessments for the maintenance and functioning of the Control Committee may be required under this part throughout the period such assessments are payable irrespective of whether particular provisions thereof are suspended or become inoperative.

* * * * *

6. Section 927.45 is added to read as follows:

§ 927.45 Contributions.

The Control Committee may accept voluntary contributions but these shall only be used to pay expenses incurred pursuant to § 927.47. Furthermore, such contributions shall be free from any encumbrances by the donor and the Control Committee shall retain complete control of their use.

7. Section 927.47 is revised to read as follows:

§ 927.47 Research and development.

The Control Committee, with the approval of the Secretary, may establish or provide for the establishment of production research, or marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption of pears. Such projects may provide for any form of marketing promotion, including paid advertising. The expense of such projects shall be paid from funds collected pursuant to §§ 927.41 and 927.45. Expenditures for a particular variety of pears shall approximate the amount of assessments and voluntary contributions collected for that variety of pears.

8. In § 927.52, paragraph (b)(1) is revised to read as follows:

§ 927.52 Prerequisites to Control Committee recommendations.

* * * * *

(b) * * *

(1) The basis of one vote for each 25,000 boxes (except 2,500 boxes for Forelle and Seckel varieties) of the average quantity of such variety produced in the particular district and shipped therefrom during the immediately preceding three fiscal periods; or

* * * * *

9. In § 927.65, paragraph (b) is revised to read as follows:

§ 927.65 Exemption from regulation.

* * * * *

(b) The Control Committee may prescribe rules and regulations, to become effective upon the approval of the Secretary, whereby quantities of pears or types of pear shipments may be exempted from any or all provisions of this subpart.

* * * * *

[FR Doc. 95–15947 Filed 6–28–95; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL RESERVE SYSTEM

12 CFR Part 220

[Regulation T; Docket No. R–0772]

RIN 7100–AB28

Securities Credit Transactions; Review of Regulation T, ''Credit by Brokers and Dealers''

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: As part of a program to periodically review its regulations, the Board is proposing amendments to Regulation T, the regulation that covers extensions of credit by and to broker and dealers (also known as creditors). These amendments reflect consideration of the comments submitted in response to the Board's Advance Notice of Proposed Rulemaking. Many of the proposed amendments feature increased reliance on rules of the Securities and Exchange Commission (SEC) and self-regulatory organizations (SROs) and others would make Regulation T consistent with Regulation G and Regulation U, the regulations covering securities credit by lenders other than broker-dealers. Proposed changes in the options area include permitting loan value for long positions in exchange-traded options and increasing reliance on the margin rules of the exchange that trades the option for customer and specialist transactions. These changes would also allow creditors to recognize the offsetting nature of financial futures in calculating margin for securities options. Proposed amendments in the international area will reduce restrictions on transactions involving foreign securities that are not publicly traded in the United States and foreign securities being sold on an installment basis if the U.S. component is a relatively small percentage of the offering. Broker-dealers would also be given more flexibility in computing overall margin requirements for customer accounts with securities denominated in one or more foreign currencies. In addition to these and other amendments, technical changes are being proposed to clarify areas that have raised questions, update references, or restore language inadvertently deleted. The Board is also soliciting comments on a number of specific proposals. Finally, a number of questions regarding the existing regulation raised by commenters are being answered.

DATES: Comments should be received on or before August 28, 1995.

ADDRESSES: Comments should refer to Docket No. R–0772, and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. Comments also may be delivered to Room B–222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street, N.W. (between Constitution Avenue and C Street, N.W.) at any time. Comments received will be available for

inspection in Room MP–500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's rules regarding availability of information.

FOR FURTHER INFORMATION CONTACT: Scott Holz, Senior Attorney, or Angela Desmond, Senior Counsel, Division of Banking Supervision and Regulation (202) 452–2781; for the hearing impaired only, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202) 452–3544.

SUPPLEMENTARY INFORMATION: In 1992, the Board issued an advance notice of proposed rulemaking and request for comment concerning a general review of Regulation T.[1] Comments were received from 31 respondents, some of whom commented more than once. The comments have been analyzed to help prepare proposed amendments to the regulation. These proposed amendments are consistent with the current tenor of the regulation and statutory requirements; however, the comments raised broad issues as to purposes that Regulation T serves in light of the current regulatory environment and market practices. One comment questioned the continuing need for the Regulation T requirements, noting that possible purposes for the regulation, such as broker dealer financial integrity and customer protection, also are addressed by SEC oversight of brokers and dealers by means of net capital and customer protection rules. Comments also suggested broad changes to Regulation T that the commenters believe are appropriate in the current environment. These changes included, but were not limited to: (1) Delegating all responsibility for margins and related requirements to the self-regulatory organizations under the oversight of the SEC; (2) applying the restrictions on arranging credit only to credit that otherwise violates margin rules; (3) eliminating margin requirements on loans to brokers and dealers; (4) exempting from the margin rules transactions in all exempt securities; (5) exempting transactions with sophisticated customers; (6) expansion of permissible arrangements for borrowing and lending securities; and (7) exempting transactions in investment grade securities. While the Board believes that it is important to proceed with the proposed amendments in order to address particular problems, the Board also believes regulatory structures should be reviewed continually, not merely to update them, but also to assess whether different structures would better meet regulatory objectives and even whether regulation is still necessary. Accordingly, the Board requests comments including particular proposals and supporting legal and policy rationale, not only on the specific changes to Regulation T set forth in this notice, but also on the proposals enumerated above, the continuing need for Regulation T, and appropriate changes to its scope and architecture. The supplementary information that follows explains what is being proposed and reasons therefor.

I. Options

A. Exchange-Traded Options

1. Loan Value for Long Options

All securities listed on a national securities exchange have loan value under Regulation T except for options. The Board proposes to eliminate this disparate treatment, which was adopted in the early 1970s, and allow exchange-traded options the same 50 percent loan value currently afforded other margin equity securities. In light of the successful growth of standardized options trading since the 1970s, the positive performance of the Options Clearing Corporation, and the development of new types of options, other securities and financial futures, the Board is proposing to treat long positions in exchange-traded options the same as other registered equity securities for margin purposes.

Granting 50 percent loan value to exchange-traded options would also address a disparity that has arisen in the past few years with the listing of so-called index warrants. Although index warrants resemble long-term options, the use of the word ''warrant'' to describe this product has led many broker-dealers to allow 50 percent loan value for these instruments while long-term options, such as LEAPs, are not permitted any loan value under the current regulation. Treating exchange-traded options the same as other exchange-traded equity securities would eliminate this disparity.

2. Increased Reliance on SRO Rules

When Regulation T was adopted in 1934, the amount of margin required for writing a put or call was the amount ''customarily required'' by the creditor. In the 1970s the Board adopted specific requirements based on existing rules of one of the self-regulatory organizations (SROs). Starting in the 1980s, the Board has on more than one occasion amended Regulation T to incorporate by reference SRO margin rules for options transactions. The Board is proposing to continue this process by increasing reliance on SRO options margin rules for customers and specialists.

a. Margin account. The margin account currently specifies positions which may serve in lieu of the margin required for writing an option on an equity security, while incorporating the rules of the SROs for options written on anything other than an equity security (such as a securities index). The Board proposes to allow SRO rules, which must be approved by the SEC, to prescribe appropriate cover for all short options positions.

Many commenters expressed support for a risk-based options margin system and/or a recognition of the offsetting nature of financial futures based on similar indexes, rates, or assets. Under the Board's proposal, the SROs would be able to further these goals in setting cover requirements for all types of securities options.

b. Cash account. Although the writing of an option creates a short position which is normally carried in the margin account, the cash account section was amended in the early 1980s to allow certain covered options transactions to be effected in this account. Board staff has since indicated that the cash account can be used for additional options transactions. These transactions are not ''covered'' in the sense that the account holds the underlying security. However, the transactions involve a quantifiably limited risk and the cash account in which the transaction is effected contains specified assets of sufficient value to cover this amount or an escrow receipt representing such assets.[2] The Board proposes to adopt generic language under which a ''covered option transaction'' would be eligible for the cash account under specified conditions. The Board is also adding money market mutual funds to the list of cash equivalents that may be used to cover a put written in the cash account.

c. Market functions account. Regulation T permits the extension of credit on a good faith basis to a specialist for transactions in its specialty security. In addition, options specialists can obtain good faith financing for the underlying security and other specialists can obtain good faith credit for options overlying their specialty securities. These positions are known as ''permitted offsets.'' The regulation specifies which positions must be held in the account to allow permitted offsets and does not provide for offsets in the case of specialists in

[1] 57 FR 37109, August 18, 1992.

[2] See, e.g., Staff Opinion of July 12, 1991, Federal Reserve Regulatory Service (*FRRS*) 5–666.251 and Staff Opinion of October 11, 1991, *FRRS* 5–666.26.

index options. The Board proposes to adopt generic language permitting the extension of good faith credit for permitted offsets, provided the position has been designated as a permitted offset under SEC-approved rules of the appropriate SRO.

B. OTC Options

In 1991, Board staff raised no objection to a broker-dealer that sought to ''arrange'' for its customer to write an OTC option on foreign securities.[3] This position would be codified by the proposed amendments to the arranging section concerning foreign securities. The Board is not proposing to extend this position to OTC options on securities which are publicly traded in the United States. Allowing broker-dealers to arrange for customers to write OTC options without collecting margin would not be consistent with the requirements of the organized options exchanges. Rules of the New York Stock Exchange (NYSE) and the National Association of Securities Dealers (NASD) both provide that margin is required for the ''issuance, guarantee or sale (other than a 'long' sale) for a customer of a put or call.'' The Board is proposing to add the word ''sell'' to the language in the cash account to make clear that the Board's rules cover the same situations covered by NYSE and NASD rules.

C. Employee Stock Options and Other Benefit Plans

Section 220.3(e)(4) of Regulation T was added in 1988 to allow creditors to help customers with valuable employee stock options exercise their options by providing short-term financing of the exercise price. The short-term loan is either paid off from the sale of the securities received pursuant to the employee stock option or replaced with a conventional margin loan extended against those securities. This practice has come to be known in the industry as ''cashless exercise.'' Over the last five years, Board staff has not objected to the expansion of the application of § 220.3(e)(4) to other types of securities customers receive under employee benefit plans, such as certain employee stock warrants. In addition, Board staff has allowed brokers to temporarily finance withholding taxes due on stock received under employee benefit plans. New language is being proposed to reflect these staff opinions. The new language would also allow the use of § 220.3(e)(4) for outside directors and consultants who are eligible to participate in employee benefit plans under SEC rules.

II. International Transactions

A. Foreign Broker-Dealers

Any entity required to register as a broker or dealer with the SEC under section 15(a) of the Securities Exchange Act of 1934 (the Act) is a creditor under Regulation T. Although the definitions of ''broker'' and ''dealer'' in the Act do not refer to nationality, the SEC's policy is to require registration of foreign broker-dealers only when they are physically operating in the United States.[4] The Board generally follows the SEC in this area and does not consider foreign broker-dealers not required to register with the SEC as creditors under Regulation T.

Although the commenters were mixed on whether the definition of creditor should be amended to include or exclude foreign broker-dealers, there was general agreement that U.S. broker-dealers purchasing securities from or selling securities to a foreign broker-dealer on a DVP basis should be able to effect the trades on a broker-to-broker basis. Proposed language is being added to the Broker-Dealer Credit Account that will make clear that foreign broker-dealers may use this account for DVP transactions with U.S. broker-dealers.

B. Foreign Currency

Since 1990, creditors have been able to extend margin credit denominated in foreign currency if it is secured by foreign margin securities denominated or traded in the same foreign currency. If a customer has securities of various denominations, margin subaccounts (and, if desired, SMA subaccounts) are set up so that credit computed in U.S. dollars and each separate currency can be isolated. Under the current rule, an increase in the value of securities used to support specific foreign currency-denominated debt cannot be used to offset a deficiency in another margin subaccount. At the request of commenters, the Board is proposing to delete this limitation and permit margin requirements denominated in any currency to be offset by equity in any marginable security or a foreign currency deposit made in connection with a security denominated in that currency. Creditors would be free to retain the current system of separate SMAs for each foreign currency denomination.

Another comment concerning foreign currency comes from the Securities Industry Association (SIA), which believes that any freely convertible currency should be able to be treated at its U.S. dollar equivalent for all purposes of Regulation T. Under the current version of Regulation T, foreign currency received in connection with the purchase, sale or loan of a security denominated in that currency may be accounted for in that currency or at its U.S. dollar equivalent. If there is no security denominated in that currency, creditors should convert the currency into its U.S. dollar equivalent upon receipt. The conversion can be effected in a customer's cash or margin account, with the resulting balance maintained in U.S. dollars.

C. Foreign Securities

1. Arranging

In 1990, the Board added an exception concerning foreign stocks to the arranging section of Regulation T which permits a creditor to arrange for its customer to receive more credit than the creditor could extend when its customer is purchasing a foreign security with credit from a foreign lender. The exception, found in section 220.13(d), was based on the theory that transactions involving foreign securities do not require the same strictness of regulation because they do not have a substantial effect on the U.S. securities market. Commenters have asked for the Board to expand the foreign stock exception to cover short sales as well. The Board agrees that equal treatment in the arranging area should be afforded to both long and short sales.

In gaining experience with the 1990 amendment, however, it has been noticed that there is an increasing trend for corporations that have issued stock abroad to list the securities for trading in the United States. Therefore, the Board is proposing a somewhat more restricted definition of what constitutes a foreign security for purposes of this section to assure equal treatment of foreign and domestic securities that are publicly traded in the United States. For example, the German conglomerate Daimler-Benz recently listed its shares on the New York Stock Exchange, thereby enabling U.S. broker-dealers to extend 50 percent credit against the stock. Under the current arranging exception for foreign securities, a creditor can arrange for its customer to borrow more than 50 percent on Daimler-Benz stock if the credit is extended by a foreign lender (often a foreign affiliate of the creditor). In contrast, a creditor may not arrange for its customer to buy AT&T stock with less than 50 percent margin, even if the credit were extended by a foreign

[3] Staff Opinion of October 22, 1991, *FRRS* 5–666.27.

[4] SEC Release No. 34–27017; 54 FR 30013 (July 18, 1989).

lender. Proposed language would address this situation and ensure equal treatment for all stocks that are publicly traded in the United States by permitting a creditor to arrange for the purchase or short sale of a ''non-U.S. traded foreign security,'' defined as a security issued abroad that does not trade on a national securities exchange or NASDAQ.

2. Lending Foreign Securities

Under Regulation T, a creditor may borrow or lend securities for the purpose of making delivery pursuant to a short sale or ''fail'' transaction. In addition, the regulation limits the type of collateral that must be pledged to secure a loan of securities. Several commenters, such as the SIA and the SIA–Credit Division, request an amendment to permit U.S. broker-dealers to lend foreign securities to a foreign person for any purpose that is lawful in the foreign country. The NYSE would like to ensure that foreign securities loaned abroad do not come back to the U.S. to cover short sales or fails. The Board is therefore proposing to allow loans of foreign securities for any lawful purpose if the securities are ''non-U.S. traded foreign securities.'' This should prevent these securities from being used for transactions in the United States. In addition, the SIA notes that many securities lending transactions occurring outside the U.S. would not meet the collateral requirements of Regulation T. The proposed amendment would allow a creditor to accept any collateral that may be pledged in the foreign country for loans of securities, providing the collateral's value is at least equal to 100 percent of the market value of the securities borrowed.

3. Installment Sales

The United Kingdom began a series of privatizations of state-owned companies in the late 1970s. Investors in the shares of these companies paid for them on an installment basis over a period of at least six months. Installment sales are not uncommon in the U.K., but are generally prohibited in this country under section 11(d) of the Act.[5] The practice is also prohibited under Regulation T if the first installment is less than the initial margin requirement.

Participation of U.S. investors in the U.K. privatizations was accommodated by letters written by Board staff.[6] The Board proposes to amend the arranging provision of Regulation T to state that a creditor is not deemed to have arranged for credit subject to the margin regulations if it sells a foreign security that is being offered on an installment basis, provided that less than 15 percent of the issue is offered to U.S. persons. This generic language would allow U.S. investors to participate in installment sales of foreign securities when the U.S. component of the offering is a relatively small portion of the overall offering and would cover offerings by foreign governments and other foreign issuers.

4. Foreign Margin Stocks

In 1990, the Board amended Regulation T to establish a List of Foreign Margin Stocks (the ''Foreign List''). These stocks are treated in the same manner as domestic margin equity securities. The Board established criteria for initial inclusion on the Foreign List and for continued listing. U.S. broker-dealers certify to an SRO that specific foreign securities meet the criteria. The Board uses the information submitted by the SRO in publishing the Foreign List. The Foreign List has grown from approximately 40 stocks in August 1990 to over 700 stocks this year.

Many commenters state that the system is cumbersome and results in all broker-dealers benefitting from the research done by a small number of firms. Some commenters have suggested that a stock included in a major foreign stock index should be automatically marginable if it meets two criteria: (1) the SEC or CFTC has approved trading in the United States of options, warrants, or futures on a foreign securities index that contains the foreign equity security and (2) the SEC has determined that the stock has a ''ready market'' for purposes of its net capital rule.[7] The Board is soliciting comment whether such a test should be adopted, which securities would be covered under the criteria, and suggestions on how this information could be integrated into the Board's Foreign List.

III. Other Customer Transactions

A. Margin Account/SMA

Most customer transactions involving credit take place in a margin account, which may be maintained in conjunction with a special memorandum account (SMA). Several commenters recommend that more than one customer, such as members of a family, be permitted to share a single SMA. One broker-dealer notes that this would allow the individual customers' accounts to be cross-collateralized and cross-guaranteed. The Board is not proposing to change the SMA at this time. In addition to operational problems raised by linked SMAs, Regulation T and the Board's other margin regulations do not allow a guarantee to have loan value for securities credit transactions.

The SIA-Credit Division suggests elimination of the provision in § 220.4(f)(2)(ii) concerning withdrawals of securities received as part of a distribution attributed to securities already in the margin account. This section is permissive in that it permits some withdrawals which create or increase a margin deficiency. Nevertheless, the Board is soliciting comment on whether such an exception is still warranted.

1. Convertible Bonds

Under Regulations G and U (12 CFR Parts 207 and 221), a debt security convertible into a margin stock is considered a margin stock. Although no comparable rule exists in Regulation T, in 1990 the Board defined foreign margin stock to include a debt security convertible into a margin security. The SIA-Credit Division and several broker-dealers recommend applying this concept to all convertible debt securities in Regulation T and the Board is proposing language to accomplish this.

2. Mutual Funds

a. Exempted securities mutual funds. Since 1968, the definition of margin stock in Regulations G and U has excluded mutual fund shares of companies whose assets are at least 95 percent invested in exempted securities. The exclusion of these funds (exempted securities mutual funds) from the definition of margin stock is equivalent to giving them good faith loan value at lenders other than broker-dealers. The Investment Company Institute has asked the Board to amend Regulation T so that exempted securities mutual funds will be entitled to good faith loan value at broker-dealers as well as other lenders. The Board is proposing to use the regulatory language found in Regulations G and U in Regulation T.

b. Money market mutual funds. In addition to exempted securities mutual funds, the Board is proposing to give good faith loan value to money market mutual funds. Money market mutual funds are subject to additional SEC regulation and are recognized as cash equivalents by the industry and the general public.

3. OTC Margin Bonds

Several commenters suggest that the Board adopt a rating requirement for all

[5] 15 U.S.C. 78k(d).

[6] See, e.g., Staff Opinion of October 24, 1984, *FRRS* 5–615.92.

[7] 17 CFR 240.15c3–1(c)(11).

debt securities as an alternative to the current requirement that domestic debt securities be registered with the SEC. The Board has adopted the rating requirement for foreign securities because the concept of comity argues against requiring SEC registration. The fact that ''mortgage-related securities'' require a rating but not SEC registration was Congressionally mandated in the Secondary Mortgage Market Enhancement Act of 1984.

The Board is proposing to strike the word ''mortgage'' from the second section of the definition of ''OTC margin bond'' to clarify that all pass-through securities can meet this definition. The Board also confirms that the minimum principal amount required for ''OTC margin bonds'' applies to shelf registrations of a single issue once the minimum amount has been issued, even though some of the individual tranches sold may be smaller.

Although a 1984 staff opinion took the position that privately-issued Treasury receipts were not exempted securities and not entitled to loan value,[8] the Board, SEC and Treasury Department have become more comfortable over time with viewing these securities as equivalent to exempt securities. For example, a 1994 Board staff opinion concerning the Glass-Steagall Act concluded that the holder of a privately-issued Treasury receipt is, for virtually all purposes, a holder of an interest in the underlying Treasury security.[9] The Board therefore does not object to the treatment of privately-issued Treasury receipts as exempted securities for purposes of Regulation T. The staff opinion to the contrary will be deleted.

4. OTC Margin Stock

A comment was received from an investor who believes stock which does not trade on NASDAQ should be marginable if the issuer has another class of marginable stock whose price is used to determine the sale price of the nonmargin stock. This situation is not being addressed by the proposed amendments. In addition to the complexity of covering such a limited group of stocks, this type of stock cannot be purchased by the general public and therefore no bid prices are available.

5. Nonsecurities Instruments

The Public Securities Association (PSA) and a broker-dealer comment that creditors should be able to extend credit on commercial paper, certificates of deposit (CDs), and bankers acceptances (BAs). All of these instruments may be used collateral for a nonpurpose loan (i.e., a loan that is not made for the purpose of purchasing, carrying, or trading in securities). Section 7(c) of the Act[10] prohibits the Board from permitting broker-dealers to accept nonsecurities as collateral in a margin account. Although commercial paper is a security and can be held in a margin account, Regulation T denies loan value to domestic debt securities that are not SEC-registered. Therefore, commercial paper is a nonmargin, nonexempted security and the Supplement to Regulation T requires a margin of 100 percent if held in a margin account.

B. Cash Account

1. Permissible Transactions

Proposed changes to the cash account concerning options are discussed in this preamble in section I.B.2. In addition, one commenter would like confirmation that customers may purchase CDs and other nonsecurities products in the cash account. A 1988 staff opinion confirmed that industry practice is to use the cash account to record the purchase of both securities and nonsecurities,[11] and the Board is proposing to add language to the cash account section of the regulation to codify this position.

2. Net settlement

In order to guard against free-riding, net settlement of trades in a cash account generally is not permitted. Customers are required to pay for all purchases in full without netting sale proceeds from securities purchased and sold on the same day in order to avoid imposition of the 90-day freeze described in § 220.8(c) of Regulation T. In 1988, Board staff confirmed two statutory exceptions to this general rule for transactions in mortgage-related securities[12] and exempted securities.[13] Some broker-dealers comment that customers should be able to net settle all transactions in a cash account as long as the regulation states that day trading is not permitted in that account. No changes are being proposed in this area as allowing net settlement of all trades in the cash account would complicate a creditor's ability to prevent free-riding in the cash account.

3. 90-Day Freeze

A customer who sells a security purchased in a cash account before making full cash payment must have sufficient funds in the account by trade date for any purchases during the next 90 days. This restriction is known as the ''90-day freeze.'' One broker-dealer suggested the freeze should not apply if the cash account holds marginable securities with sufficient loan value to pay for the securities that have been sold before having been paid for. This suggestion is contrary to the nature of the cash account. A customer who contemplates the need for credit to settle securities purchases should be using a margin account and not a cash account.

Another broker-dealer believes the freeze should not apply if a customer decides to liquidate a purchase made on a DVP basis when the customer is ready to make full payment but the selling broker does not make timely delivery and the security is otherwise unavailable. The Board agrees that a customer should not be subject to the 90-day restriction when it decides to liquidate a transaction that the counterparty cannot complete.

C. Other Accounts

1. Arbitrage Account

Transactions effected in the arbitrage account are not subject to Regulation T margin requirements. The SIA and a broker-dealer have requested that the arbitrage account no longer require that the transactions be entered into to take advantage of a concurrent disparity in prices. However, elimination of the requirement that the two transactions yield an immediate gain would expand this special provision beyond those transactions which perform a market function by bringing together the prices of securities or markets which should be the same. Therefore no changes are being proposed to the arbitrage account.

2. Broker-Dealer Credit Account

The broker-dealer credit account is normally available only for broker-dealers.[14] However, the brokerage industry has developed a service known as ''prime brokerage'' in which a customer maintains a cash and/or margin account with a ''prime broker'' to record transactions executed at one or more executing brokers. Industry practice has been for the executing broker to use the broker-dealer credit account to record the transactions sent

[8] Staff Opinion of December 13, 1984, *FRRS* 5–628.13.

[9] Staff Opinion of January 10, 1994, *FRRS* 4–655.5.

[10] 15 U.S.C. 78g(c).

[11] *FRRS* 5–615.955.

[12] *FRRS* 5–615.952.

[13] *FRRS* 5–628.17.

[14] As noted in the section on foreign broker-dealers, the Board is proposing to allow foreign broker-dealers to use the broker-dealer credit account when purchasing securities on a DVP basis.

to the prime broker (who enforces Regulation T vis-a-vis the customer). After discussions with Board staff and an SIA committee, the SEC issued a no action letter last year describing requirements that must be followed in connection with prime brokerage.[15] The Board is proposing to add language to the broker-dealer credit account to officially acknowledge its use in prime brokerage transactions.

D. Other Transactions

1. Repurchase Agreements

A repurchase agreement from a broker-dealer's point of view may be viewed as a borrowing by the creditor and should not generally be covered by the Board's margin regulations as long as the security is not subject to the restrictions imposed by section 8(a) of the Act. The repurchase agreements addressed herein are reverse repurchase agreements in which a customer sells a security to a creditor with an agreement to repurchase from the creditor at a later time. Repurchase agreements in government securities are permitted in the government securities account created last year.[16]

In addition to repurchase agreements on government securities the PSA, SIA and several broker-dealers request an amendment that would permit repurchase agreements on all fixed income securities with good faith loan value, although the PSA acknowledges that it may be appropriate to treat these transactions as margin loans. However, broker-dealers traditionally require 20 percent margin when financing nonexempted debt securities and do not lend the 100 percent implied in structuring the transaction as a repurchase agreement. Although the PSA acknowledges the resemblance between repurchase agreements and margin loans, it states that practical problems make the cash account or a new account more appropriate. Although the collection of margin from a customer by a broker-dealer would seem to indicate that the transaction is properly recorded in the margin account, the Board is soliciting comment on the advisability of creating a new account for repurchase agreements on securities other than government securities in which margin would be collected as if the transaction were a conventional margin loan. The PSA, SIA, and a law firm also request creation of a new account to allow forward transactions, which are not permitted under Regulation T unless the security is trading on a when-issued basis or is a government or mortgage-related security. Comment is also invited on the advisability of accommodating forward transactions accompanied by the deposit required for a conventional margin loan in an account other than a margin account.

The PSA and SIA would also like creditors to be able to effect repurchase agreements on money market instruments that may not qualify as securities. Such transactions are permissible in the nonsecurities credit account as long as the proceeds are not used for purpose credit.

2. Two-Tiered Market

The SIA and several broker-dealers believe the Board should establish an account or subaccount where creditors may effect and finance all securities transactions on a good faith basis for customers who meet some level of financial sophistication. In the past, the Board has amended the arranging section of Regulation T to permit creditors to arrange for certain types of credit for sophisticated customers.[17] No further relaxation of the regulation is being proposed in this area at this time.

3. Use of Money Market Funds

As noted above,[18] the Board is proposing to add money market mutual funds to the list of cash equivalents available to cover a put written in the cash account and give the fund shares good faith loan value in a margin account. The SIA-Credit Division and two other broker-dealers believe money market mutual funds should be treated as cash without having to be liquidated. Although the Board recognizes that money market shares are often viewed as cash equivalents, they are not cash. A customer who is required to deposit cash pursuant to Regulation T must liquidate the shares to realize cash.

IV. Broker-Dealer Transactions

A. Credit Extended to Other Broker-Dealers

1. All Broker-Dealers

The commenters were split on the question of whether broker-dealers should continue to be treated as customers under Regulation T. The principal argument in favor of special treatment for broker-dealers is that they are subject to minimum net capital requirements that impose a limit on leverage, albeit greater leverage than that permitted public customers. The Board continues to believe special credit (i.e., lower margin) is appropriate when broker-dealers perform a market function, but is not proposing treatment that differs from that for public customers for reasons of equity.

2. Specialists and Market-Makers

Regulation T permits special credit for broker-dealers performing a market function. The Board is proposing clarifying language to the provisions describing OTC market makers and third-market makers to respond to questions that have arisen since the regulation was last revised.

The SIA would like the Board to permit deficit financing of specialists, eliminate restrictions on their permitted offsets and eliminate the restriction in § 220.12(b)(4) of Regulation T concerning free-riding by specialists. As discussed in this preamble in section I.A.2.c., the Board is proposing to allow any permitted offset that is permissible under SEC-approved rules of the creditor's examining authority. Although the Board supports the concept of good faith credit for specialist transactions, deficit financing is a form of unsecured credit, which is prohibited by section 7(c) of the Act.[19] The restriction on free-riding by specialists by its terms does not apply to any specialist on an exchange that has an SEC-approved rule on the same subject.

One broker-dealer suggested expanding the definition of OTC market-maker to include market makers of convertible bonds who post their prices in the ''yellow sheets'' or deal in convertible bonds traded pursuant to SEC Rule 144A.[20] Convertible bonds are equity securities under the Act[21] and the Board has designated convertible bonds as OTC margin stock when they meet the criteria in section 220.17 of Regulation T. OTC market-makers are registered with NASDAQ as such and are required to engage in a certain level of market-making, as are specialists. The Board does not permit good faith credit for broker-dealers making a market in equity securities via the ''pink sheets.'' Consistency argues against permitting such credit for broker-dealers making a market in convertible bonds via the

[15] Letter of January 25, 1994, from Brandon Becker, Esq. to Mr. Jeffrey C. Bernstein, reprinted in CCH Federal Securities Law Reporter at ¶ 76,819.

[16] See 59 FR 53565 (October 25, 1994).

[17] For example, the exemption in section 220.13(b) requires that the sale of securities be effected pursuant to the SEC's private placement exception from registration. Such sales must be made to sophisticated investors.

[18] See section I.A.2.b. on the cash account under options and section III.A.2.b. on mutual funds above.

[19] 15 U.S.C. 78g(c).

[20] 17 CFR 230.144A.

[21] Section 3(a)(11) of the Act (15 U.S.C. 78c(a)(11)) defines equity security to include any security convertible into an equity security.

''yellow sheets'' or those trading pursuant to SEC Rule 144A.

3. Joint Back Office Arrangements

Section 220.11(a)(2) of Regulation T allows broker-dealers to set up a joint back office (JBO). The owners of the JBO are not considered customers of the clearing organization and therefore no Regulation T margin is required, although the clearing firm generally obtains the appropriate securities haircut from its participants. When the JBO section was adopted, the Board assumed there would be a reasonable relationship between the creditors' ownership interests and the amount of business conducted and did not adopt an explicit requirement for the amount of ownership each broker-dealer should have in the JBO. Since adoption of the provision, several stock exchanges have expressed concern that JBOs are permitting credit far in excess of the participant's interest. Much of the activity was attributed to index options specialists seeking good faith financing for stock baskets, which is not otherwise permitted under Regulation T. As discussed in the section on the market functions account under options, the Board is proposing to permit such financing under SEC-approved rules of the exchanges and this change should reduce the pressure on JBOs to extend credit greatly disproportionate to the amount of equity ownership. Nevertheless, the Board is also proposing to state explicitly that the participants' ownership interest in the JBO should be reasonably related to the amount of business conducted through it. Three stock exchanges and one other commenter support changes along these lines.

4. Credit to Other Types of Broker-Dealers

Several commenting broker-dealers suggest additional classes of creditors that should be entitled to good faith credit. One broker-dealer suggests creating a new category of broker-dealers entitled to beneficial margin treatment that would be under some affirmative obligation to add liquidity to the market but would not be required to be present on the trading floor. The Board has traditionally allowed good faith credit for specialists engaged in specialist transactions and deferred to the SEC to determine who is a specialist under the Act. It is unclear what the effect would be on specialists if other broker-dealers with lesser market-making obligations were permitted good faith credit on certain transactions.

The SIA-Credit Division believes that self-clearing broker-dealers who choose to go through another broker-dealer should not be required to post customer margin. Board staff has addressed this issue several times [22] and reiterated that the treatment of a broker-dealer depends on whether it clears the transaction itself and not whether it *could* clear the transaction. In addition, a broker-dealer suggested that affiliated broker-dealers should not be treated as customers. Board staff has indicated that affiliated (sister) firms are treated as customers [23] and no policy reasons for changing this have been presented.

B. Borrowing and Lending Securities

Section 220.16 of Regulation T covers the borrowing and lending of securities. Securities may be borrowed or lent in connection with the need to make delivery in short sales and fails to receive. The section covers the borrowing and lending of all types of securities,[24] including those with good faith loan value, and requires enumerated types of collateral worth at least 100 percent of the market value of the securities on a daily basis. Although stock loans are economically equivalent to repurchase agreements, the former are based on the need to make delivery and are not meant to be financing arrangements for the owner of the securities being lent.[25]

1. Collateral

a. *Foreign sovereign debt.* In 1988, the Board amended Regulation T to give good faith loan value to highly rated foreign sovereign bonds. Shortly thereafter, Board staff indicated that these securities should be acceptable as collateral for stock loans if the currency of the lent security is the same as the sovereign bond.[26] The Board is proposing explicitly to add foreign sovereign bonds to the list of collateral in § 220.16 of Regulation T without restriction as to currency. This change was supported by the SIA, SIA-Credit Division, NYSE and several broker-dealers.

b. *SEC customer protection rule.* While § 220.16 of Regulation T covers all borrowing and lending of securities by creditors, the SEC's customer protection rule [27] also applies if the creditor is borrowing securities from its customer. Both rules specify permissible types of collateral. In 1989 the SEC proposed expanding the types of acceptable collateral specified in its rule [28] and its staff issued a no action letter in the interim. Regulation T currently expressly provides for all of these types of collateral, with the exception of foreign sovereign debt, which is being proposed as part of this package. To ensure that acceptable collateral under § 220.16 of Regulation T is always at least as broad as that required by the SEC when creditors borrow securities from their customers, the Board is proposing to refer to the SEC's customer protection rule in § 220.16 of Regulation T.

c. *Other collateral.* The SIA and a broker-dealer seek confirmation that any freely convertible currency may be treated as cash collateral for borrowings of securities. Although this may present a currency risk not originally anticipated, the Board believes that this is permissible, given that such loans are marked-to-market daily with collateral equal to at least 100 percent of the market value of the securities being borrowed.

Several commenters support expanding acceptable collateral to include options or some or all types of marginable securities, while the NYSE is opposed to this concept. Although the Board has gradually expanded the types of acceptable collateral over the years, it has always required collateral with high liquidity and low volatility.

2. Permitted Purposes

a. *Pre-borrowing.* Although Regulation T currently permits borrowing of securities for short sales that have been effected or are in immediate prospect, several commenters support the concept of ''pre-borrowing,'' the borrowing of securities in anticipation of a short sale that may or may not take place in the near future. Pre-borrowing can lead to an attempt to ''squeeze'' the market for a security by locking up all available shares and hindering the ability of others to sell that security short.[29]

[22] See, e.g., Staff Opinion of August 18, 1986, *FRRS* 5–621.16.

[23] Staff Opinion of December 16, 1988, *FRRS* 5–621.18.

[24] The government securities account can be used to conduct all types of permissible transactions involving government securities, including borrowing and lending.

[25] The Financial Accounting Standards Board (FASB) is currently debating the differing treatment of repurchase agreements and stock loans and has tentatively concluded that repurchase agreements should be accounted for as collateralized borrowings if the repurchase agreement entitles the party receiving financial assets subject to repurchase to repledge them but not sell them. Most securities lending transactions that entitle the party receiving the financial assets to sell them would be accounted for as sales. Staff plans to review the Regulation T treatment in this area once FASB reaches a decision on the matter.

[26] Staff Opinion of September 23, 1988, *FRRS* 5–615.15.

[27] SEC Rule 15c3–3, 17 CFR 240.15c3–3.

[28] SEC Release No. 34–26608, 54 FR 10680 (March 15, 1989).

[29] Board staff has indicated that a permissible alternative to pre-borrowing is the payment of a

Continued

b. *Dividend reinvestment and stock purchase plans.* In addition to pre-borrowing, commenters such as the NYSE and several broker-dealers suggest that broker-dealers be permitted to borrow securities in order to participate in an issuer's dividend reinvestment and stock purchase plan. These plans allow dividends, and often additional funds, to be used to purchase additional shares of the issuer, usually at a discount from the current stock price. Board staff opinions and SEC enforcement actions have made clear that Regulation T as currently written does not permit the borrowing of securities for this purpose.[30]

The Board is not proposing to include dividend reinvestment and stock purchase plans as a permitted purpose for borrowing securities. Permitting such borrowing would not be consistent with existing Board policy concerning borrowing and lending securities. The Board has permitted securities lending where it is needed for the smooth operation of the securities markets, i.e. short sales and fails to receive securities. This view was echoed by the Group of Thirty when they recommended removing impediments to securities lending to allow delivery of securities. Participation in dividend reinvestment and stock purchase plans does not help the securities markets complete transactions as broker-dealers do not actually want or need possession of the securities. Nevertheless, in light of comments received indicating that many issuers view these programs as a less costly means of raising capital, the Board is soliciting comment on whether section 220.16 of Regulation T should be amended to accommodate these plans.

c. *Other purposes.* The PSA, SIA and a broker-dealer recommend adding repurchase agreements to the list of permitted purposes. Since a repurchase agreement represents the sale of a security with a promise to repurchase it at a later date, a creditor who does not own the security subject to the repurchase agreement is engaging in a short sale and therefore may borrow the security pursuant to section 220.16 of Regulation T.[31]

One broker-dealer believes institutions such as banks and insurance companies should be able to borrow securities from a creditor if they say it is for a permitted purpose. However, Regulation T and the U.S. securities markets in general presume that the borrowing of securities will be effected by the broker-dealer that executes the trade. Permitting an entity other than a broker-dealer to borrow securities for a transaction effected by a broker-dealer would permit circumvention of the Board's margin requirements.

C. Borrowing by Creditors

All of the commenters addressing section 8(a) of the Act, which limits the source of certain loans to broker-dealers to member banks and some nonmember banks, support expansion of the types of lenders described in section 8(a) or a reduction in the types of transactions subject to the restriction. The SEC has recently exempted all listed debt securities from the scope of section 8(a) of the Act,[32] with the result that only loans secured by exchange-traded equity securities are still subject to the restriction.

A wide variety of commenters recommend legislation be introduced to loosen the restrictions of section 8(a). Such legislation is currently pending in Congress.[33]

V. Section-by-Section Explanation of Proposed Changes

Section 220.2 Definitions

The following new definitions are being proposed: *cash equivalent, covered option transaction, exempted securities mutual fund, foreign person, money market mutual fund, non-U.S. traded foreign security, and permitted offset position.* The following definitions would be modified: *escrow agreement, in the money, margin security, OTC margin bond, OTC margin stock, short call or short put, and underlying security.* The definition of in or at the money would be deleted and SEC-approved rules of the appropriate SRO would govern permitted offsets for specialists.

Section 220.3 General Provisions

Section 220.3(e)(4), ''Receipt of funds or securities,'' is used by creditors to temporarily finance the exercise of a customer's employee stock option. The section would be reworded to permit such short-term financing for anyone entitled to receive or acquire any securities pursuant to an SEC-registered employee benefit plan.

Section 220.3(i), ''Variable annuity contracts issued by insurance companies,'' would be deleted, although no substantive change is intended.

Section 220.4 Margin Account

Section 220.4(b) would contain all provisions of section 220.5, except for those covering specific options transactions. The options provisions would be deleted and SEC-approved rules of the SROs would apply to these transactions.

Section 220.4(c) would no longer prohibit a margin excess in a foreign currency subaccount from offsetting a margin deficiency in another foreign currency subaccount.

Section 220.5 Special Memorandum Account

This account would be moved from section 220.6. No substantive changes are proposed.

Section 220.6 Government Securities Account

This account would be moved from section 220.18. No substantive changes are proposed.

Section 220.8 Cash Account

Section 220.8(a), Permissible transactions,'' would be amended in two ways. First, the cash account would recognize industry practice and specifically permit the sale to a customer of any asset on a cash basis. Second, the covered options transactions permitted under section 220.8(a)(3) would be broadened to include any eligible transaction designated by the SEC-approved rules of the SROs.

Section 220.8(b), ''Time periods for payment; cancellation or liquidation,'' would permit creditors to accept full cash payment from customers for the purchase of foreign securities up to one day after the regular way settlement date.

Section 220.11 Broker-Dealer Credit Account

Three substantive changes are being proposed to section 220.11(a), ''Permissible transactions.'' First, foreign broker-dealers would be permitted to use the account for delivery-versus-payment transactions with U.S. broker-dealers. Second, joint back office arrangements would require a reasonable relationship between the owners' equity interest and the amount of business effected or financed by the joint back office. Third, ''prime broker'' arrangements set up under SEC guidelines would be able to use this

commitment fee to a stock lender. See staff opinion of October 22, 1990, FRRS 5–615.18.

[30] Staff Opinions of March 2, 1984, FRRS 5–615.1 and July 6, 1984, FRRS 5–615.01; see also In re RFG Options, SEC Administrative Proceeding File No. 3–6370, September 26, 1988.

[31] As noted in footnote 29, all transactions involving government securities may be effected in the government securities account without regard to other provisions of Regulation T.

[32] SEC Rule 3a12–11, 17 CFR 240.3a12–11, published at 59 FR 55342, November 7, 1994.

[33] H.R. 1062, 104th Cong., 1st Sess.

account for transactions effected at executing broker-dealers.

Section 220.12 Market Functions Account

Section 220.12(b), ''Specialists,'' would be amended to allow SEC-approved rules of the SROs to determine which permitted offsets can be effected on a good faith basis.

Section 220.13 Arranging for Loans by Others

Changes are proposed for this section in two areas. First, the provision allowing U.S. broker-dealers to arrange for customers to obtain credit from a foreign lender to purchase foreign securities would be expanded to cover short sales while the overall coverage of this provision would be limited to foreign securities that are not publicly traded in the United States. Second, the regulation would explicitly permit U.S. broker-dealers to sell its customers foreign securities with installment features if the offering has only a small U.S. component.

Section 220.16 Borrowing and Lending Securities

Two changes are proposed for this section. First, the required collateral would be expanded to include marginable foreign sovereign debt securities and any collateral that is acceptable to the SEC when a broker-dealer borrows securities from its customer. Second, U.S. broker-dealers would be able to lend foreign securities to a foreign person for any legal purpose and against any legal collateral.

Section 220.18 Supplement: Margin Requirements

Several changes are being proposed. Options would be given fifty percent loan value if listed on a national securities exchange. Mutual funds whose portfolio is limited to exempted securities would be given good faith loan value, as would money market mutual funds.

VI. Regulatory Flexibility Act

The Board believes there will be no significant economic impact on a substantial number of small entities if this proposal is adopted. Comments are invited on this statement.

VII. Paperwork Reduction Act

No additional reporting requirements or modification to existing reporting requirements are proposed.

List of Subjects in 12 CFR Part 220

Banks, banking, Bonds, Brokers, Credit, Federal Reserve System, Margin, Margin requirements, Investment companies, Investments, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, the Board proposes to amend 12 CFR Part 220 as follows:

PART 220—CREDIT BY BROKERS AND DEALERS (REGULATION T)

1. The authority citation for Part 220 continues to read as follows:

Authority: 15 U.S.C. 78c, 78g, 78h, 78q, and 78w.

2. The table of contents for part 220 is amended by revising the entries for §§ 220.1–220.18 and renaming the entry for § 220.19 to read as follows:

Sec.
220.1 Authority, purpose, and scope.
220.2 Definitions.
220.3 General provisions.
220.4 Margin account.
220.5 Special memorandum account.
220.6 Government securities account.
220.7 Arbitrage account.
220.8 Cash account.
220.9 Nonsecurities credit and employee stock ownership account.
220.10 Omnibus account.
220.11 Broker-dealer credit account.
220.12 Market functions account.
220.13 Arranging for loans by others.
220.14 Clearance of securities, options, and futures.
220.15 Borrowing by creditors.
220.16 Borrowing and lending securities.
220.17 Requirements for the list of marginable OTC stocks and the list of foreign margin stocks.
220.18 Supplement: Margin requirements.

* * * * *

3. Sections 220.1 through 220.18 are revised to read as follows:

§ 220.1 Authority, purpose, and scope.

(a) *Authority and purpose.* Regulation T (this part) is issued by the Board of Governors of the Federal Reserve System (the Board) pursuant to the Securities Exchange Act of 1934 (the Act) (15 U.S.C. 78a *et seq.*). Its principal purpose is to regulate extensions of credit by and to brokers and dealers; it also covers related transactions within the Board's authority under the Act. It imposes, among other obligations, initial margin requirements and payment rules on securities transactions.

(b) *Scope.* (1) This part provides a margin account and eight special purpose accounts in which to record all financial relations between a customer and a creditor. Any transaction not specifically permitted in a special account shall be recorded in a margin account.

(2) This part does not preclude any exchange, national securities association, or creditor from imposing additional requirements or taking action for its own protection.

(3) This part does not apply to transactions between a customer and a broker or dealer registered only under section 15C of the Act.

§ 220.2 Definitions.

The terms used in this part have the meanings given them in section 3(a) of the Act or as defined in this section.

Cash equivalent means securities issued or guaranteed by the United States or its agencies, negotiable bank certificates of deposit, bankers acceptances issued by banking institutions in the United States and payable in the United States, or money market mutual funds.

Covered option transaction means:

(1) In the case of a short call, the underlying security (or a security immediately convertible into the underlying security, without the payment of money) is held in or purchased for the account on the same day, and the option premium is held in the account until cash payment for the underlying or convertible security is received; or

(2) In the case of a short put, the creditor obtains cash in an amount equal to the exercise price or holds in the account cash equivalents with a current market value at least equal to the exercise price and with one year or less to maturity; or

(3) Any other transaction involving options or warrants in which the customer's risk is limited to a fixed amount and is not subject to early exercise if:

(i) The amount at risk is held in the account in cash, cash equivalents, or via an escrow receipt; and

(ii) The transaction has been defined as eligible for the cash account by the rules of the registered national securities exchange authorized to trade the option or warrant, provided that all such rules have been approved or amended by the SEC.

Credit balance means the cash amount due the customer in a margin account after debiting amounts transferred to the special memorandum account.

Creditor means any broker or dealer (as defined in sections 3(a)(4) and 3(a)(5) of the Act), any member of a national securities exchange, or any person associated with a broker or dealer (as defined in section 3(a)(18) of the Act), except for business entities controlling or under common control with the creditor.

Customer includes:

(1) Any person or persons acting jointly:

(i) To or for whom a creditor extends, arranges, or maintains any credit; or

(ii) Who would be considered a customer of the creditor according to the ordinary usage of the trade;

(2) Any partner in a firm who would be considered a customer of the firm absent the partnership relationship; and

(3) Any joint venture in which a creditor participates and which would be considered a customer of the creditor if the creditor were not a participant.

Debit balance means the cash amount owed to the creditor in a margin account after debiting amounts transferred to the special memorandum account.

Delivery against payment, Payment against delivery, or a C.O.D. transaction refers to an arrangement under which a creditor and a customer agree that the creditor will deliver to, or accept from, the customer, or the customer's agent, a security against full payment of the purchase price.

Equity means the total current market value of security positions held in the margin account plus any credit balance less the debit balance in the margin account.

Escrow agreement means any agreement issued in connection with a call or put option under which a bank or any person designated as a control location under paragraph (c) of SEC Rule 15c3–3 (17 CFR 240.15c3–3), holding the underlying security, foreign currency, certificate of deposit, or required cash, is obligated to deliver to the creditor (in the case of a call option) or accept from the creditor (in the case of a put option) the underlying security, foreign currency, or certificate of deposit against payment of the exercise price upon exercise of the call or put.

Examining authority means:

(1) The national securities exchange or national securities association of which a creditor is a member; or

(2) If a member of more than one self-regulatory organization, the organization designated by the SEC as the examining authority for the creditor.

Exempted securities mutual fund means any security issued by an investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a-8), provided the company has at least 95 percent of its assets continuously invested in exempted securities (as defined in section 3(a)(12) of the Act).

Foreign margin stock means: (1) A foreign security that is an equity security and that appears on the Board's periodically published List of Foreign Margin Stocks based on information submitted by a self-regulatory organization under procedures approved by the Board. *Foreign person* means a person other than a United States person as defined in section 7(f) of the Act.

Foreign security means a security issued in a jurisdiction other than the United States.

Good faith margin means the amount of margin which a creditor, exercising sound credit judgment, would customarily require for a specified security position and which is established without regard to the customer's other assets or securities positions held in connection with unrelated transactions.

In the money means the current market price of the underlying security or index is not below (with respect to a call option) or above (with respect to a put option) the exercise price of the option.

Margin call means a demand by a creditor to a customer for a deposit of additional cash or securities to eliminate or reduce a margin deficiency as required under this part.

Margin deficiency means the amount by which the required margin exceeds the equity in the margin account.

Margin excess means the amount by which the equity in the margin account exceeds the required margin. When the margin excess is represented by securities, the current value of the securities is subject to the percentages set forth in § 220.18 (Supplement: Margin requirements).

Margin security means:

(1) Any registered security;

(2) Any OTC margin stock;

(3) Any OTC margin bond;

(4) Any OTC security designated as qualified for trading in the National Market System under a designation plan approved by the Securities and Exchange Commission (NMS security);

(5) Any security issued by either an open-end investment company or unit investment trust which is registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8);

(6) Any foreign margin stock; or

(7) Any debt security convertible into a margin security.

Money market mutual fund means any security issued by an investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8) that is considered a money market fund under SEC Rule 2a–7 (17 CFR 270.2a–7).

Nonexempted security means any security other than an exempted security (as defined in section 3(a)(12) of the Act).

Nonmember bank means a bank that is not a member of the Federal Reserve System.

Non-U.S. traded foreign security means a foreign security that is neither a registered security nor one listed on NASDAQ.

OTC margin bond means:

(1) A debt security not traded on a national securities exchange which meets all of the following requirements:

(i) At the time of the original issue, a principal amount of not less than $25,000,000 of the issue was outstanding;

(ii) The issue was registered under section 5 of the Securities Act of 1933(15 U.S.C. 77e) and the issuer either files periodic reports pursuant to section 13(a) or 15(d) of the Act or is an insurance company which meets all of the conditions specified in section 12(g)(2)(G) of the Act; and

(iii) At the time of the extension of credit, the creditor has a reasonable basis for believing that the issuer is not in default on interest or principal payments; or

(2) A private pass-through security (not guaranteed by an agency of the U.S. government) meeting all of the following requirements:

(i) An aggregate principal amount of not less than $25,000,000 (which maybe issued in series) was issued pursuant to a registration statement filed with the SEC under section 5 of the Securities Act of 1933 (15 U.S.C. 77e);

(ii) Current reports relating to the issue have been filed with the SEC; and

(iii) At the time of the credit extension, the creditor has a reasonable basis for believing that mortgage interest, principal payments and other distributions are being passed through as required and that the servicing agent is meeting its material obligations under the terms of the offering; or

(3) A mortgage related security as defined in section 3(a)(41) of the Act; or

(4) A debt security issued or guaranteed as a general obligation by the government of a foreign country, its provinces, states, or cities, or a supranational entity, if at the time of the extension of credit one of the following is rated in one of the two highest rating categories by a nationally recognized statistical rating organization:

(i) The issue;

(ii) The issuer or guarantor (implicitly); or

(iii) Other outstanding unsecured long-term debt securities issued or guaranteed by the government or entity; or

(5) A foreign security that is a nonconvertible debt security that meets all of the following requirements:

(i) At the time of original issue, a principal amount of at least $100,000,000 was outstanding;

(ii) At the time of the extension of credit, the creditor has a reasonable

basis for believing that the issuer is not in default on interest or principal payments; and

(iii) At the time of the extension of credit, the issue is rated in one of the two highest rating categories by a nationally recognized statistical rating organization, except that an issue that has not been rated as of the effective date of this provision shall be considered an OTC margin bond if a subsequent unsecured issue of at least $100,000,000 of the same issuer is rated in one of the two highest rating categories by a nationally recognized statistical rating organization.

OTC margin stock means any equity security traded over-the-counter that the Board has determined has the degree of national investor interest, the depth and breadth of market, the availability of information respecting the security and its issuer, and the character and permanence of the issuer to warrant being treated like an equity security traded on a national securities exchange. An OTC stock is not considered to be an OTC margin stock unless it appears on the Board's periodically published list of OTC margin stocks.

Overlying option means:

(1) A put option purchased or a call option written against a long position in an underlying security in the specialist record in § 220.12(b); or

(2) A call option purchased or a put option written against a short position in an underlying security in the specialist record in § 220.12(b).

Payment period means the number of business days in the standard securities settlement cycle in the United States, as defined in paragraph (a) of SEC Rule 15c6–1 (17 CFR 240.15c6–1), plus two business days.

Permitted offset position means a position in securities or other assets underlying options in which a specialist makes a market or a position in options overlying the securities in which a specialist makes a market, provided the positions qualify as permitted offsets under the rules of the national securities exchange with which the specialist is registered, provided that all such rules have been approved or amended by the SEC.

Purpose credit means credit for the purpose of:

(1) Buying, carrying, or trading in securities; or

(2) Buying or carrying any part of an investment contract security which shall be deemed credit for the purpose of buying or carrying the entire security.

Registered security means any security that:

(1) Is registered on a national securities exchange; or

(2) Has unlisted trading privileges on a national securities exchange.

Short call or short put means a call option or a put option that is issued, endorsed, guaranteed or sold in or for an account.

(1) A short call that is not cash-settled obligates the customer to sell the underlying asset at the exercise price upon receipt of a valid exercise notice.

(2) A short put that is not cash-settled obligates the customer to purchase the underlying asset at the exercise price upon receipt of a valid exercise notice.

(3) A short call or a short put that is cash-settled obligates the customer to pay the holder of an in the money long put or call who has exercised the option the cash difference between the exercise price and the current assigned value of the option as established by the option contract.

Specialist joint account means an account which, by written agreement, provides for the commingling of the security positions of the participants and a sharing of profits and losses from the account on some predetermined ratio.

Underlying security means:

(1) the security that will be delivered upon exercise of an option; or

(2) In the case of a cash-settled option, the securities which comprise the index in the same proportion or any other asset from which the option's value is derived.

§ 220.3 General provisions.

(a) *Records.* The creditor shall maintain a record for each account showing the full details of all transactions.

(b) *Separation of accounts.* Except as provided for in the margin account and the special memorandum account, the requirements of an account may not be met by considering items in any other account. If withdrawals of cash or securities are permitted under the regulation, written entries shall be made when cash or securities are used for purposes of meeting requirements in another account.

(c) *Maintenance of credit.* Except as prohibited by this part, any credit initially extended in compliance with this part may be maintained regardless of:

(1) Reductions in the customer's equity resulting from changes in market prices;

(2) Any security in an account ceasing to be margin or exempted; or

(3) Any change in the margin requirements prescribed under this part.

(d) *Guarantee of accounts.* No guarantee of a customer's account shall be given any effect for purposes of this part.

(e) *Receipt of funds or securities.* (1) A creditor, acting in good faith, may accept as immediate payment:

(i) Cash or any check, draft, or order payable on presentation; or

(ii) Any security with sight draft attached.

(2) A creditor may treat a security, check or draft as received upon written notification from another creditor that the specified security, check, or draft has been sent.

(3) Upon notification that a check, draft, or order has been dishonored or when securities have not been received within a reasonable time, the creditor shall take the action required by this part when payment or securities are not received on time.

(4) To temporarily finance a customer's receipt of stock pursuant to an employee benefit plan registered on SEC Form S–8, a creditor may accept, in lieu of the securities, a properly executed exercise notice and instructions to the issuer to deliver the stock to the creditor. Prior to acceptance, the creditor must verify that the issuer will deliver the securities promptly and the customer must designate the account into which the securities are to be deposited.

(f) *Exchange of securities.* (1) To enable a customer to participate in an offer to exchange securities which is made to all holders of an issue of securities, a creditor may submit for exchange any securities held in a margin account, without regard to the other provisions of this part, provided the consideration received is deposited into the account.

(2) If a nonmargin, nonexempted security is acquired in exchange for a margin security, its retention, withdrawal, or sale within 60 days following its acquisition shall be treated as if the security is a margin security.

(g) *Valuing securities.* The current market value of a security shall be determined as follows:

(1) Throughout the day of the purchase or sale of a security, the creditor shall use the security's total cost of purchase or the net proceeds of its sale including any commissions charged.

(2) At any other time, the creditor shall use the closing sale price of the security on the preceding business day, as shown by any regularly published reporting or quotation service. If there is no closing price, the creditor may use any reasonable estimate of the market value of the security as of the close of business on the preceding business day.

(h) *Innocent mistakes.* If any failure to comply with this part results from a mistake made in good faith in executing a transaction or calculating the amount of margin, the creditor shall not be deemed in violation of this part if, promptly after the discovery of the mistake, the creditor takes appropriate corrective action.

§ 220.4 Margin account.

(a) *Margin transactions.* (1) All transactions not specifically authorized for inclusion in another account shall be recorded in the margin account.

(2) A creditor may establish separate margin accounts for the same person to:

(i) Clear transactions for other creditors where the transactions are introduced to the clearing creditor by separate creditors; or

(ii) Clear transactions through other creditors if the transactions are cleared by separate creditors; or

(iii) Provide one or more accounts over which the creditor or a third party investment adviser has investment discretion.

(b) *Required margin*—(1) *Applicability.* The required margin for each long or short position in securities is set forth in § 220.18 (Supplement: Margin requirements) and is subject to the following exceptions and special provisions.

(2) *Short sale against the box.* A short sale ''against the box'' shall be treated as a long sale for the purpose of computing the equity and the required margin.

(3) *When issued securities.* The required margin on a net long or net short commitment in a when issued security is the margin that would be required if the security were an issued margin security, plus any unrealized loss on the commitment or less any unrealized gain.

(4) *Stock used as cover.* (i) When a short position held in the account serves in lieu of the required margin for a short put, the amount prescribed by paragraph (b)(1) of this section as the amount to be added to the required margin in respect of short sales shall be increased by any unrealized loss on the position.

(ii) When a security held in the account serves in lieu of the required margin for a short call, the security shall be valued at no greater than the exercise price of the short call.

(5) *Accounts of partners.* If a partner of the creditor has a margin account with the creditor, the creditor shall disregard the partner's financial relations with the firm (as shown in the partner's capital and ordinary drawing accounts) in calculating the margin or equity of the partner's margin account.

(6) *Contribution to joint venture.* If a margin account is the account of a joint venture in which the creditor participates, any interest of the creditor in the joint account in excess of the interest which the creditor would have on the basis of its right to share in the profits shall be treated as an extension of credit to the joint account and shall be margined as such.

(7) *Transfer of accounts.* (i) A margin account that is transferred from one creditor to another may be treated as if it had been maintained by the transferee from the date of its origin, if the transferee accepts, in good faith, a signed statement of the transferor (or, if that is not practicable, of the customer), that any margin call issued under this part has been satisfied.

(ii) A margin account that is transferred from one customer to another as part of a transaction, not undertaken to avoid the requirements of this part, may be treated as if it had been maintained for the transferee from the date of its origin, if the creditor accepts in good faith and keeps with the transferee account a signed statement of the transferor describing the circumstances for the transfer.

(8) *Credit denominated in foreign currency.* A creditor may extend credit denominated in a foreign currency secured by foreign margin securities denominated or traded in the same foreign currency and specifically identified on the creditor's books and records as securing the foreign currency debit.

(c) *When additional margin is required*—(1) *Computing deficiency.* All transactions on the same day shall be combined to determine whether additional margin is required by the creditor. For the purpose of computing equity in an account, security positions are established or eliminated and a credit or debit created on the trade date of a security transaction. Additional margin is required on any day when the day's transactions create or increase a margin deficiency in the account and shall be for the amount of the margin deficiency so created or increased.

(2) *Satisfaction of deficiency.* The additional required margin may be satisfied by a transfer from the special memorandum account or by a deposit of cash, margin securities, exempted securities, or any combination thereof.

(3) *Time limits.* (i) A margin call shall be satisfied within one payment period after the margin deficiency was created or increased.

(ii) The payment period may be extended for one or more limited periods upon application by the creditor to its examining authority unless the examining authority believes that the creditor is not acting in good faith or that the creditor has not sufficiently determined that exceptional circumstances warrant such action. Applications shall be filed and acted upon prior to the end of the payment period or the expiration of any subsequent extension.

(4) *Satisfaction restriction.* Any transaction, position, or deposit that is used to satisfy one requirement under this part shall be unavailable to satisfy any other requirement.

(d) *Liquidation in lieu of deposit.* If any margin call is not met in full within the required time, the creditor shall liquidate securities sufficient to meet the margin call or to eliminate any margin deficiency existing on the day such liquidation is required, whichever is less. If the margin deficiency created or increased is $1000 or less, no action need be taken by the creditor.

(e) *Withdrawals of cash or securities.* (1) Cash or securities may be withdrawn from an account, except if:

(i) Additional cash or securities are required to be deposited into the account for a transaction on the same or a previous day; or

(ii) The withdrawal, together with other transactions, deposits, and withdrawals on the same day, would create or increase a margin deficiency.

(2) Margin excess may be withdrawn or may be transferred to the special memorandum account (§ 220.5) by making a single entry to that account which will represent a debit to the margin account and a credit to the special memorandum account.

(3) If a creditor does not receive a distribution of cash or securities which is payable with respect to any security in a margin account on the day it is payable and withdrawal would not be permitted under paragraph, (e) of this section, a withdrawal transaction shall be deemed to have occurred on the day the distribution is payable.

(f) *Interest, service charges, etc.* (1) Without regard to the other provisions of this section, the creditor, in its usual practice, may debit the following items to a margin account if they are considered in calculating the balance of such account:

(i) Interest charged on credit maintained in the margin account;

(ii) Premiums on securities borrowed in connection with short sales or to effect delivery;

(iii) Dividends, interest, or other distributions due on borrowed securities;

(iv) Communication or shipping charges with respect to transactions in the margin account; and

(v) Any other service charges which the creditor may impose.

(2) A creditor may permit interest, dividends, or other distributions credited to a margin account to be withdrawn from the account if:

(i) The withdrawal does not create or increase a margin deficiency in the account; or

(ii) The current market value of any securities withdrawn does not exceed 10 percent of the current market value of the security with respect to which they were distributed.

§ 220.5 Special memorandum account.

(a) A special memorandum account (SMA) may be maintained in conjunction with a margin account. A single entry amount may be used to represent both a credit to the SMA and a debit to the margin account. A transfer between the two accounts may be effected by an increase or reduction in the entry. When computing the equity in a margin account, the single entry amount shall be considered as a debit in the margin account. A payment to the customer or on the customer's behalf or a transfer to any of the customer's other accounts from the SMA reduces the single entry amount.

(b) The SMA may contain the following entries:

(1) Dividend and interest payments;

(2) Cash not required by this part, including cash deposited to meet a maintenance margin call or to meet any requirement of a self-regulatory organization that is not imposed by this part;

(3) Proceeds of a sale of securities or cash no longer required on any expired or liquidated security position that may be withdrawn under § 220.4(e); and

(4) Margin excess transferred from the margin account under § 220.4(e)(2).

§ 220.6 Government securities account.

In a government securities account, a creditor may effect and finance transactions involving government securities, provided the transaction is not prohibited by section 15C of the Act or any rule thereunder.

§ 220.7 Arbitrage account.

In an arbitrage account a creditor may effect and finance for any customer *bona fide* arbitrage transactions. For the purpose of this section, the term ''*bona fide* arbitrage'' means:

(a) A purchase or sale of a security in one market together with an offsetting sale or purchase of the same security in a different market at as nearly the same time as practicable for the purpose of taking advantage of a difference in prices in the two markets; or

(b) A purchase of a security which is, without restriction other than the payment of money, exchangeable or convertible within 90 calendar days of the purchase into a second security together with an offsetting sale of the second security at or about the same time, for the purpose of taking advantage of a concurrent disparity in the prices of the two securities.

§ 220.8 Cash account.

(a) *Permissible transactions.* In a cash account, a creditor, may:

(1) Buy for or sell to any customer any security or other asset if:

(i) There are sufficient funds in the account; or

(ii) The creditor accepts in good faith the customer's agreement that the customer will promptly make full cash payment for the security or asset before selling it and does not contemplate selling it prior to making such payment;

(2) Buy from or sell for any customer any security or other asset if:

(i) The security is held in the account; or

(ii) The creditor accepts in good faith the customer's statement that the security is owned by the customer or the customer's principal, and that it will be promptly deposited in the account;

(3) Issue, endorse, guarantee, or sell an option for any customer as part of a covered option transaction; and

(4) Use an escrow agreement in lieu of the cash or underlying security position if:

(i) In the case of a short call or a short put, the creditor is advised by the customer that the required securities or cash are held by a person authorized to issue an escrow agreement and the creditor independently verifies that the appropriate escrow agreement will be delivered by the person promptly; or

(ii) In the case of a call issued, endorsed, guaranteed, or sold on the same day the underlying security is purchased in the account and the underlying security is to be delivered to a person authorized to issue an escrow agreement, the creditor verifies that the appropriate escrow agreement will be delivered by the person promptly.

(b) *Time periods for payment; cancellation or liquidation*—(1) *Full cash payment.* A creditor shall obtain full cash payment for customer purchases—

(i) Within one payment period of the date:

(A) Any nonexempted security was purchased;

(B) Any when issued security was made available by the issuer for delivery to purchasers;

(C) Any ''when distributed'' security was distributed under a published plan;

(D) A security owned by the customer has matured or has been redeemed and a new refunding security of the same issuer has been purchased by the customer, provided:

(*1*) The customer purchased the new security no more than 35 calendar days prior to the date of maturity or redemption of the old security;

(*2*) The customer is entitled to the proceeds of the redemption; and

(*3*) The delayed payment does not exceed 103 percent of the proceeds of the old security.

(ii) In the case of the purchase of a foreign security, within one payment period of the trade date or within one day after the date on which settlement is required to occur by the rules of the foreign securities market, provided this period does not exceed the maximum time permitted by this part for delivery against payment transactions.

(2) *Delivery against payment.* If a creditor purchases for or sells to a customer a security in a delivery against payment transaction, the creditor shall have up to 35 calendar days to obtain payment if delivery of the security is delayed due to the mechanics of the transaction and is not related to the customer's willingness or ability to pay.

(3) *Shipment of securities, extension.* If any shipment of securities is incidental to consummation of a transaction, a creditor may extend the payment period by the number of days required for shipment, but not by more than one additional payment period.

(4) *Cancellation; liquidation; minimum amount.* A creditor shall promptly cancel or otherwise liquidate a transaction or any part of a transaction for which the customer has not made full cash payment within the required time. A creditor may, at its option, disregard any sum due from the customer not exceeding $1000.

(c) *90 day freeze.* (1) If a nonexempted security in the account is sold or delivered to another broker or dealer without having been previously paid for in full by the customer, the privilege of delaying payment beyond the trade date shall be withdrawn for 90 calendar days following the date of sale of the security. Cancellation of the transaction other than to correct an error shall constitute a sale.

(2) The 90 day freeze shall not apply if:

(i) Within the period specified in paragraph (b)(1) of this section, full payment is received or any check or draft in payment has cleared and the proceeds from the sale are not withdrawn prior to such payment or check clearance; or

(ii) The purchased security was delivered to another broker or dealer for deposit in a cash account which holds sufficient funds to pay for the security. The creditor may rely on a written statement accepted in good faith from the other broker or dealer that sufficient funds are held in the other cash account.

(d) *Extension of time periods; transfers.* (1) Unless the creditor's examining authority believes that the creditor is not acting in good faith or that the creditor has not sufficiently determined that exceptional circumstances warrant such action, it may upon application by the creditor:

(i) Extend any period specified in paragraph (b) of this section;

(ii) Authorize transfer to another account of any transaction involving the purchase of a margin or exempted security; or

(iii) Grant a waiver from the 90 day freeze.

(2) Applications shall be filed and acted upon prior to the end of the payment period, or in the case of the purchase of a foreign security within the period specified in paragraph (b)(1)(ii) of this section, or the expiration of any subsequent extension.

§ 220.9 Nonsecurities credit and employee stock ownership account.

(a) In a nonsecurities credit account a creditor may:

(1) Effect and carry transactions in commodities;

(2) Effect and carry transactions in foreign exchange;

(3) Extend and maintain secured or unsecured nonpurpose credit, subject to the requirements of paragraph (b) of this section; and

(4) Extend and maintain credit to employee stock ownership plans without regard to the other sections of this part.

(b) Every extension of credit, except as provided in paragraphs (a)(1) and (a)(2) of this section, shall be deemed to be purpose credit unless, prior to extending the credit, the creditor accepts in good faith from the customer a written statement that it is not purpose credit. The statement shall conform to the requirements established by the Board. To accept the customer's statement in good faith, the creditor shall be aware of the circumstances surrounding the extension of credit and shall be satisfied that the statement is truthful.

§ 220.10 Omnibus account.

(a) In an omnibus account, a creditor may effect and finance transactions for a broker or dealer who is registered with the SEC under section 15 of the Act and who gives the creditor written notice that:

(1) All securities will be for the account of customers of the broker or dealer; and

(2) Any short sales effected will be short sales made on behalf of the customers of the broker or dealer other than partners.

(b) The written notice required by paragraph (a) shall conform to any SEC rule on the hypothecation of customers' securities by brokers or dealers.

§ 220.11 Broker-dealer credit account.

(a) *Permissible transactions.* In a broker-dealer credit account, a creditor may:

(1) Purchase any security from or sell any security to another creditor or person regulated by a foreign securities authority under a good faith agreement to promptly deliver the security against full payment of the purchase price.

(2) Effect or finance transactions of any of its owners if the creditor is a clearing and servicing broker or dealer owned jointly or individually by other creditors, provided that the owners' interest is reasonably related to the amount of business they transact through the joint back office.

(3) Extend and maintain credit to any partner or stockholder of the creditor for the purpose of making a capital contribution to, or purchasing stock of, the creditor, affiliated corporation or another creditor.

(4) Extend and maintain, with the approval of the appropriate examining authority:

(i) Credit to meet the emergency needs of any creditor; or

(ii) Subordinated credit to another creditor for capital purposes, if the other creditor:

(A) Is an affiliated corporation or would not be considered a customer of the lender apart from the subordinated loan; or

(B) Will not use the proceeds of the loan to increase the amount of dealing in securities for the account of the creditor, its firm or corporation or an affiliated corporation.

(5) Effect transactions for a customer as part of a ''prime broker'' arrangement in conformity with SEC guidelines.

(b) *Affiliated corporations.* For purposes of paragraphs (a)(3) and (a)(4) of this section ''affiliated corporation'' means a corporation all the common stock of which is owned directly or indirectly by the firm or general partners and employees of the firm, or by the corporation or holders of the controlling stock and employees of the corporation and the affiliation has been approved by the creditor's examining authority.

§ 220.12 Market functions account.

(a) *Requirements.* In a market functions account, a creditor may effect or finance the transactions of market participants in accordance with the following provisions. A separate record shall be kept for the transactions specified for each category described in paragraphs (b) through (e) of this section. Any position in a separate record shall not be used to meet the requirements of any other category.

(b) *Specialists*—(1) *Applicability.* A creditor may clear or finance specialist transactions and permitted offset positions for any specialist, or any specialist joint account, in which all participants, or all participants other than the creditor, are registered as specialists on a national securities exchange that requires regular reports on the use of specialist credit from the registered specialists.

(2) *Required margin.* The required margin for a specialist's transactions shall be:

(i) Good faith margin for:

(A) Any long or short position in a security in which the specialist makes a market;

(B) Any wholly-owned margin security or exempted security; or

(C) Any permitted offset position.

(ii) The margin prescribed by § 220.18 (Supplement: Margin requirements) when a security purchased or sold short in the account does not qualify as a specialist or permitted offset position.

(3) *Additional margin; restriction on ''free-riding''.* (i) Except as required by paragraph (b)(4) of this section, the creditor shall issue a margin call on any day when additional margin is required as a result of specialist transactions. The creditor may allow the specialist a maximum of one payment period to satisfy a margin call.

(ii) If a specialist fails to satisfy a margin call within the period specified in paragraph (b)(3) of this section (and the creditor is required to liquidate securities to satisfy the call), the creditor shall be prohibited for a 15 calendar day period from extending any further credit to the specialist to finance transactions in nonspecialty securities.

(iii) The restriction on ''free-riding'' shall not apply to:

(A) Any specialist on a national securities exchange that has an SEC-approved rule on ''free-riding'' by specialists; or

(B) The acquisition or liquidation of a permitted offset position.

(4) *Deficit status.* On any day when a specialist's separate record would

liquidate to a deficit, the creditor shall not extend any further specialist credit in the account and shall issue a margin call at least as large as the deficit. If the call is not met by noon of the following business day, the creditor shall liquidate positions in the specialist's account.

(5) *Withdrawals.* Withdrawals may be permitted to the extent that the equity exceeds the margin requirements specified in paragraph (b)(2) of this section.

(c) *Underwriters and distributors.* A creditor may effect or finance for any dealer or group of dealers transactions for the purpose of facilitating the underwriting or distribution of all or a part of an issue of securities with a good faith margin.

(d) *OTC marketmakers and third marketmakers.* (1) A creditor may clear or finance with a good faith margin, marketmaking transactions for a creditor who is a registered NASDAQ marketmaker or a qualified third marketmaker as defined in SEC Rule 3b–8 (17 CFR 240.3b–8).

(2) If the credit extended to a marketmaker ceases to be for the purpose of marketmaking, or the dealer ceases to be a marketmaker for an issue of securities for which credit was extended, the credit shall be subject to the margin specified in § 220.18 (Supplement: Margin requirements).

(e) *Odd-lot dealers.* A creditor may clear and finance odd-lot transactions for any creditor who is registered as an odd-lot dealer on a national securities exchange with a good faith margin.

§ 220.13 Arranging for loans by others.

(a) A creditor may not arrange for the extension or maintenance of credit to or for any customer by any person upon terms and conditions other than those upon which the creditor may itself extend or maintain credit under the provisions of this part, except that this limitation shall not apply to credit arranged for a customer which does not violate parts 207 and 221 of this chapter and results solely from:

(1) Investment banking services, provided by the creditor to the customer, including, but not limited to, underwritings, private placements, and advice and other services in connection with exchange offers, mergers, or acquisitions, except for underwritings that involve the public distribution of an equity security with installment or other deferred payment provisions;

(2) The sale of nonmargin securities (including securities with installment or other deferred payment provisions) if the sale is exempted from the registration requirements of the Securities Act of 1933 under section 4(2) of section 4(6) of the Act;

(3) A subsequent loan or advance on a face-amount certificate as permitted under 15 U.S.C. 80a–28(d); or

(4) Credit extended by a foreign person in connection with the purchase or short sale of non-U.S. traded foreign securities.

(b) A creditor shall not be deemed to have arranged credit by effecting the sale of a foreign security offered on an installment basis if no more than 15 percent of the issue is offered to United States persons as defined in section 7(f) of the Act.

§ 220.14 Clearance of securities, options, and futures.

(a) *Credit for clearance of securities.* The provisions of this part shall not apply to the extension or maintenance of any credit that is not for more than one day if it is incidental to the clearance of transactions in securities directly between members of a national securities exchange or association or through any clearing agency registered with the SEC.

(b) *Deposit of securities with a clearing agency.* The provisions of this part shall not apply to the deposit of securities with an options or futures clearing agency for the purpose of meeting the deposit requirements of the agency if:

(1) The clearing agency:

(i) Issues, guarantees performance on, or clears transactions in, any security (including options on any security, certificate of deposit, securities index or foreign currency); or

(ii) Guarantees performance of contracts for the purchase or sale of a commodity for future delivery or options on such contracts;

(2) The clearing agency is registered with the Securities and Exchange Commission or is the clearing agency for a contract market regulated by the Commodity Futures Trading Commission; and

(3) The deposit consists of any margin security and complies with the rules of the clearing agency that have been approved by the Securities and Exchange Commission or the Commodity Futures Trading Commission.

§ 220.15 Borrowing by creditors.

(a) *Restrictions on borrowing.* A creditor may not borrow in the ordinary course of business as a broker or dealer using as collateral any registered nonexempted security, except:

(1) From or through a member bank of the Federal Reserve System; or

(2) From any nonmember bank that has filed with the Board an agreement as prescribed in paragraph (b) of this section, which agreement is still in effect; or

(3) From another creditor if the loan is permissible under this part.

(b) *Agreements of nonmember banks.* (1) A nonmember bank shall file an agreement that conforms to the requirements of section 8(a) of the Act (See Form FR T–1, T–2).

(2) Any nonmember bank may terminate its agreement if it obtains the written consent of the Board.

§ 220.16 Borrowing and lending securities.

(a) Without regard to the other provisions of this part, a creditor may borrow or lend securities for the purpose of making delivery of the securities in the case of short sales, failure to receive securities required to be delivered, or other similar situations. Each borrowing shall be secured by a deposit of one or more of the following: cash, cash equivalents, foreign sovereign nonconvertible debt securities that are margin securities, collateral acceptable for borrowings of securities pursuant to SEC Rule 15c3–3 (17 CFR 240.15c3–3), or irrevocable letters of credit issued by a bank insured by the Federal Deposit Insurance Corporation or a foreign bank that has filed an agreement with the Board on Form FR T–1, T–2. Such deposit made with the lender of the securities shall have at all times a value at least equal to 100 percent of the market value of the securities borrowed, computed as of the close of the preceding business day.

(b) A creditor may lend non-U.S. traded foreign securities to a foreign person for any purpose lawful in the country in which they are to be used. Each borrowing shall be secured with collateral having at all times a value at least equal to 100 percent of the market value of the securities borrowed, computed as of the close of the preceding business day.

§ 220.17 Requirements for the list of marginable OTC stocks and the list of foreign margin stocks.

(a) *Requirements for inclusion on the list of marginable OTC stocks.* Except as provided in paragraph (f) of this section, OTC margin stock shall meet the following requirements:

(1) Four or more dealers stand willing to, and do in fact, make a market in such stock and regularly submit bona fide bids and offers to an automated quotations system for their own accounts;

(2) The minimum average bid price of such stock, as determined by the Board, is at least $5 per share;

(3) The stock is registered under section 12 of the Act, is issued by an

insurance company subject to section 12(g)(2)(G) of the Act, is issued by a closed-end investment management company subject to registration pursuant to section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8), is an American Depository Receipt (ADR) of a foreign issuer whose securities are registered under section 12 of the Act, or is a stock of an issuer required to file reports under section 15(d) of the Act;

(4) Daily quotations for both bid and asked prices for the stock are continuously available to the general public;

(5) The stock has been publicly traded for at least six months;

(6) The issuer has at least $4 million of capital, surplus, and undivided profits;

(7) There are 400,000 or more shares of such stock outstanding in addition to shares held beneficially by officers, directors or beneficial owners of more than 10 percent of the stock;

(8) There are 1,200 or more holders of record, as defined in SEC Rule 12g5–1(17 CFR 240.12g5–1), of the stock who are not officers, directors or beneficial owners of 10 percent or more of the stock, or the average daily trading volume of such stock as determined by the Board, is at least 500 shares; and

(9) The issuer or a predecessor in interest has been in existence for at least three years.

(b) *Requirements for continued inclusion on the list of marginable OTC stocks.* Except as provided in paragraph (f) of this section, OTC margin stock shall meet the following requirements:

(1) Three or more dealers stand willing to, and do in fact, make a market in such stock and regularly submit bona fide bids and offers to an automated quotations system for their own accounts;

(2) The minimum average bid price of such stocks, as determined by the Board, is at least $2 per share;

(3) The stock is registered as specified in paragraph (a)(3) of this section;

(4) Daily quotations for both bid and asked prices for the stock are continuously available to the general public;

(5) The issuer has at least $1 million of capital, surplus, and undivided profits;

(6) There are 300,000 or more shares of such stock outstanding in addition to shares held beneficially by officers, directors, or beneficial owners of more than 10 percent of the stock; and

(7) There continue to be 800 or more holders of record, as defined in SEC Rule 12g5–1 (17 CFR 240.12g5–1), of the stock who are not officers, directors, or beneficial owners of 10 percent or more of the stock, or the average daily trading volume of such stock, as determined by the Board, is at least 300 shares.

(c) *Requirements for inclusion on the list of foreign margin stocks.* Except as provided in paragraph (f) of this section, foreign margin stock shall meet the following requirements:

(1) The security is listed for trading on or through the facilities of a foreign securities exchange or a recognized foreign securities market and has been trading on such exchange or market for at least six months;

(2) Daily quotations for both bid and asked or last sale prices for the security provided by the foreign securities exchange or foreign securities market on which the security is traded are continuously available to creditors in the United States pursuant to an electronic quotation system;

(3) The aggregate market value of shares, the ownership of which is unrestricted, is not less than $1 billion;

(4) The average weekly trading volume of such security during the preceding six months is either at least 200,000 shares or $1 million; and

(5) The issuer or a predecessor in interest has been in existence for at least five years.

(d) *Requirements for continued inclusion on the list of foreign margin stocks.* Except as provided in paragraph (f) of this section, foreign margin stock shall meet the following requirements:

(1) The security continues to meet the requirements specified in paragraphs (c)(1) and (2) of this section;

(2) The aggregate market value of shares, the ownership of which is unrestricted, is not less than $500 million; and

(3) The average weekly trading volume of such security during the preceding six months is either at least 100,000 shares or $500,000.

(e) *Removal from the lists.* The Board shall periodically remove from the lists any stock that:

(1) Ceases to exist or of which the issuer ceases to exist; or

(2) No longer substantially meets the provisions of paragraphs (b) or (d) of this section or the definition of OTC margin stock.

(f) *Discretionary authority of Board.* Without regard to other paragraphs of this section, the Board may add to, or omit or remove from the list of marginable OTC stocks and the list of foreign margin stocks and equity security, if in the judgment of the Board, such action is necessary or appropriate in the public interest.

(g) *Unlawful representations.* It shall be unlawful for any creditor to make, or cause to be made, any representation to the effect that the inclusion of a security on the list of marginable OTC stocks or the list of foreign margin stocks is evidence that the Board or the SEC has in any way passed upon the merits of, or given approval to, such security or any transactions therein. Any statement in an advertisement or other similar communication containing a reference to the Board in connection with the lists or stocks on those lists shall be an unlawful representation.

§ 220.18 Supplement: Margin requirements.

The required margin for each security position held in a margin account shall be as follows:

(a) Margin equity security, except for an exempted security, money market mutual fund or exempted securities mutual fund: 50 percent of the current market value of the security or the percentage set by the regulatory authority where the trade occurs, whichever is greater.

(b) Exempted security, registered nonconvertible debt security, OTC margin bond, money market mutual fund or exempted securities mutual fund: The margin required by the creditor in good faith or the percentage set by the regulatory authority where the trade occurs, whichever is greater.

(c) Short sale of nonexempted security, except for a registered nonconvertible debt security or OTC margin bond: 150 percent of the current market value of the security, or 100 percent of the current market value if a security exchangeable or convertible within 90 calendar days without restriction other than the payment of money into the security sold short is held in the account.

(d) Short sale of an exempted security, registered nonconvertible debt security or OTC margin bond: 100 percent of the current market value of the security plus the margin required by the creditor in good faith.

(e) Nonmargin, nonexempted security: 100 percent of the current market value.

(f) Short put or short call on a security, certificate of deposit, securities index or foreign currency:

(1) In the case of puts and calls issued by a registered clearing corporation and listed or traded on a registered national securities exchange or a registered securities association, the amount, or other position, specified by the rules of the registered national securities exchange or the registered securities association authorized to trade the option, provided that all such rules have been approved or amended by the SEC; or

(2) In the case of all other puts and calls, the amount, or other position, specified by the maintenance rules of the creditor's examining authority.

§ 220.19 [Removed]

4. Section 229.19 is removed.

By order of the Board of Governors of the Federal Reserve System, June 21, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–15680 Filed 6–28–95; 8:45 am]

BILLING CODE 6210–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[ME–23–1–6827b; A–1–FRL–5214–5]

Approval and Promulgation of Air Quality Implementation Plans; Maine; Gasoline Marketing Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Maine on July 6, 1994. This revision consists of regulations which require the implementation of reasonably available control technology (RACT) for controlling volatile organic compound (VOC) emissions from gasoline marketing operations. In the Final Rules Section of this **Federal Register**, EPA is approving the gasoline marketing regulations included in the State's July 6, 1994 SIP submittal. EPA is approving several of these regulations as a direct final rule without prior proposal because the Agency views them as noncontroversial and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this proposal. Any parties interested in commenting on this proposal should do so at this time.

DATES: Comments must be received on or before July 31, 1995.

ADDRESSES: Comments may be mailed to Susan Studlien, Acting Director, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Bldg., Boston, MA 02203. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA and the Bureau of Air Quality Control, Department of Environmental Protection, 71 Hospital Street, Augusta, ME 04333.

FOR FURTHER INFORMATION CONTACT: Anne E. Arnold, (617) 565–3166.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule which is located in the Rules Section of this **Federal Register**.

Authority: 42 U.S.C. 7401–7671q.

Dated: May 19, 1995.

John P. DeVillars,

Regional Administrator, Region I.

[FR Doc. 95–15958 Filed 6–28–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[WI53–01–6914; FRL–5250–2]

Redesignation of the Forest County Potawatomi Community to a PSD Class I Area; State of Wisconsin

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The purpose of this action is to propose approval and seek public comment on the request by the Forest County Potawatomi (FCP) Tribal Council to redesignate lands within the FCP Reservation in the State of Wisconsin to Class I under USEPA's regulations for prevention of significant deterioration (PSD) of air quality. The Class I designation will result in lowering the allowable increases in ambient concentrations of particulate matter (PM), sulfur dioxide (SO_2), and nitrogen oxides (NO_X) on certain of the FCP Community's lands.

DATES: Comments must be received on or before September 5, 1995. An informational meeting and public hearing on this proposal will be held on August 2, 1995. The informational meeting will start at 2:00 pm CDT and the public hearing will immediately follow it.

ADDRESSES: Written comments should be addressed to: Carlton Nash, Chief, Regulation Development Section, Air Toxics and Radiation Branch, United States Environmental Protection Agency, 77 West Jackson Boulevard (AT–18J), Chicago, Illinois 60604.

An informational meeting on Class I PSD redesignations in general and a public hearing on the FCP redesignation request in particular will be held at the Indian Springs Lodge on Highway 32 in Carter, Wisconsin starting at 2:00 pm CDT on August 2, 1995. The hearing will be strictly limited to the subject matter of the proposal, which is that the proposed redesignation meets the procedural requirements.

Supporting information used in developing the proposed rule and materials submitted to USEPA relevant to the proposed action are available during normal business hours for public inspection and copying at the Air Toxics and Radiation Branch, Region 5, United States Environmental Protection Agency, 77 West Jackson Boulevard (AT–18J), Chicago, Illinois 60604. A copy of this information and materials is also available for inspection at the Crandon Public Library, 104 South Lake Avenue, Crandon, Wisconsin 54520–1458.

FOR FURTHER INFORMATION CONTACT: Constantine Blathras, USEPA Region 5 (AT–18J), 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–0671.

SUPPLEMENTARY INFORMATION: Part C Title I of the Clean Air Act (Act) provides for the prevention of significant deterioration of air quality. The intent of Part C is to prevent deterioration of existing air quality, in areas having relatively clean air—those areas designated pursuant to Section 107 of the Act, as ''unclassifiable'', or ''attainment'' relative to an areas National Ambient Air Quality Standard. These areas are referred to as ''PSD areas''. The Act provides for three basic classifications applicable to PSD areas located within the United States. Associated with each classification are increments which represent the maximum allowable increase in ambient air pollutant concentrations above a baseline concentration.

Part C initially designated as Federal Class I certain areas, under Section 162(a) of the Act, such as international parks, wilderness areas, national memorial parks, and national parks.[1] The PSD regulations provide special protection for Federal Class I areas. Class II applies to areas in which pollutant increases accompanying moderate growth is allowed. Class III applies to those areas in which

[1] The 1990 CAA Amendments included provisions to allow the boundaries of existing federal Class I areas to be expanded, but no new Class I areas were created.